

AMENDED IN SENATE MAY 13, 2003

AMENDED IN SENATE APRIL 29, 2003

AMENDED IN SENATE APRIL 21, 2003

**SENATE BILL**

**No. 620**

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**Introduced by Senator Scott**

February 20, 2003

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An act to amend Sections 787, 10127.10, 10127.13, and 10509.8 of, and to add Sections 789.9, 789.10, 1724, 1749.8, 10127.17, and 10127.18 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 620, as amended, Scott. Annuities: life insurance: required disclosures and prohibited sales practices.

Existing law imposes a special duty of honesty, good faith, and fair dealing on an insurer, broker, agent, and all others engaged in the transaction of insurance with a prospective insured who is 65 years of age or older, except for specified types of insurance transactions. Under existing law, the Insurance Commissioner is authorized to assess an administrative penalty for the violation of this duty and other provisions relating to senior insurance. Existing law establishes a 30-day period following the purchase of an individual life insurance policy or an individual annuity contract by a senior citizen, during which time the policy or contract may be canceled and all premiums and fees refunded, and requires certain disclosures in that regard.

Existing law regulates viatical settlements, as defined, and imposes certain requirements on a person entering into or soliciting viatical settlements.

This bill would enact additional restrictions on advertising practices that target senior citizens and would expand the scope of existing restrictions, currently applicable to disability insurance, to ~~insurance settlements and life insurance~~, annuity products. The bill would establish a presumption that the issuance and delivery of a deferred annuity product to a senior is unsuitable under certain conditions, and would require an issuer of annuities to develop a suitability plan for its agents to use in selling annuities. The bill would prohibit insurance agents, brokers, and solicitors who are not attorneys from sharing commissions or other compensation with attorneys ~~who are not insurance agents~~. The bill would require specific training and continuing education for insurance agents, brokers, and representatives in order for these producers to sell annuities. The bill would revise the disclosure requirements applicable to the sale of life insurance and annuity products to seniors, and would impose certain additional disclosure requirements applicable to ~~insurance settlements~~ *life insurance policies and annuities*. The bill would impose restrictions on the sale of *life insurance policies and annuities* ~~and insurance settlements~~ in the home of a senior citizen. The bill would prohibit an agent or insurer from recommending the unnecessary replacement, as defined, of an annuity by a senior citizen. The bill would impose certain duties on the Insurance Commissioner in this regard, and enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 787 of the Insurance Code is amended
- 2 to read:
- 3 787. Any advertisement or other device designed to produce
- 4 leads based on a response from a potential insured which is
- 5 directed towards persons age 65 or older shall disclose that an
- 6 agent may contact the applicant if that is the fact. In addition, an
- 7 agent who makes contact with a person as a result of acquiring that
- 8 person's name from a lead generating device shall disclose that fact
- 9 in the initial contact with the person.
- 10 (a) No insurer, agent, broker, solicitor, or other person or other
- 11 entity shall solicit persons age 65 and older in this state for the
- 12 purchase of disability insurance, ~~insurance settlements~~ *life*

1 *insurance*, or annuities through the use of a true or fictitious name  
2 which is deceptive or misleading with regard to the status,  
3 character, or proprietary or representative capacity of the entity or  
4 person, or to the true purpose of the advertisement.

5 (b) For the purposes of this section, an advertisement includes  
6 envelopes, stationery, business cards, or other materials designed  
7 to describe and encourage the purchase of a policy or certificate of  
8 disability insurance, ~~an insurance settlement~~ *life insurance*, or an  
9 annuity.

10 (c) Advertisements shall not employ words, letters, initials,  
11 symbols, or other devices which are so similar to those used by  
12 governmental agencies, a nonprofit or charitable institution,  
13 senior organization, or other insurer that they could have the  
14 capacity or tendency to mislead the public. Examples of ~~such~~  
15 misleading materials, include, but are not limited to, those which  
16 imply any of the following:

17 (1) The advertised coverages are somehow provided by or are  
18 endorsed by any governmental agencies, nonprofit or charitable  
19 institution or senior organizations.

20 (2) The advertiser is the same as, is connected with, or is  
21 endorsed by governmental agencies, nonprofit or charitable  
22 institutions or senior organizations.

23 (d) No advertisement may use the name of a state or political  
24 subdivision thereof in a policy name or description.

25 (e) No advertisement may use any name, service mark, slogan,  
26 symbol, or any device in any manner that implies that the insurer,  
27 or the policy or certificate advertised, or that any agency who may  
28 call upon the consumer in response to the advertisement, is  
29 connected with a governmental agency, such as the Social Security  
30 Administration.

31 (f) No advertisement may imply that the reader may lose a  
32 right, or privilege, or benefits under federal, state, or local law if  
33 he or she fails to respond to the advertisement.

34 (g) An insurer, agent, broker, or other entity may not use an  
35 address so as to mislead or deceive as to the true identity, location,  
36 or licensing status of the insurer, agent, broker, or other entity.

37 (h) No insurer may use, in the trade name of its insurance policy  
38 or certificate, any terminology or words so similar to the name of  
39 a governmental agency or governmental program as to have the

1 capacity or the tendency to confuse, deceive, or mislead a  
2 prospective purchaser.

3 (i) All advertisements used by agents, producers, brokers,  
4 solicitors, or other persons for a policy of an insurer shall have  
5 written approval of the insurer before they may be used.

6 (j) No insurer, agent, broker, or other entity may solicit a  
7 particular class by use of advertisements which state or imply that  
8 the occupational or other status as members of the class entitles  
9 them to reduced rates on a group or other basis when, in fact, the  
10 policy or certificate being advertised is sold on an individual basis  
11 at regular rates.

12 (k) No advertisement for an event designed to promote the sale  
13 of insurance products or settlements or to produce leads for future  
14 sales of insurance products or settlements may use the terms  
15 “seminar,” “class,” “informational meeting,” or substantially  
16 equivalent terms to characterize the purpose of the public  
17 gathering or event unless it adds the words “and sales  
18 presentation” immediately following those terms in the same font  
19 as those terms.

20 (l) No agent, broker, solicitor, or other person or entity may use  
21 a professional designation unless that designation is conferred by  
22 an accredited college or university or conferred by a long-standing  
23 professional trade association that is nonprofit and not controlled  
24 by founding individuals.

25 (m) License information in an advertisement shall be listed  
26 immediately prior to, and in the same font as, any professional  
27 designation.

28 SEC. 2. Section 789.9 is added to the Insurance Code, to read:

29 789.9. (a) Insurers owe a special duty of suitability to seniors  
30 65 years and older who apply for or own annuity products.

31 ~~(b) The commissioner shall presume the issuance and delivery~~  
32 ~~of a deferred annuity product to a senior is unsuitable and a~~  
33 ~~violation of this article unless the insurer is able to demonstrate the~~  
34 ~~suitability of the product for the individual senior.~~

35 ~~(c)~~

36 (b) If the senior’s purpose in purchasing ~~the~~ any annuity is to  
37 affect Medi-Cal eligibility, the issuance shall be unsuitable if the  
38 purchaser’s assets are equal to or less than the community spouse  
39 resource allowance, *established annually by the State Department*  
40 *of Health Services pursuant to the Medi-Cal Act (Chapter 7*

(commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 3. Section 789.10 is added to the Insurance Code, to read:

789.10. (a) Each issuer of annuities shall develop a suitability plan applicable to seniors 65 years of age and older, and train its agents to use this plan.

(b) The plan shall utilize criteria, including, but not limited to, the following: the age of purchaser, insured, or annuitant; his or her competence to contract; his or her purpose in purchasing the annuity product; the likelihood the senior will need access to cash for future needs such as health care, long-term care, or other emergencies; the likelihood that those needs may occur during the period surrender charges would be assessed; and the likelihood the senior may need access to the annuitized funds to meet those needs.

(c) Each insurer who receives an application from a senior for a deferred annuity shall, before issuing the contract, mail the applicant a supplemental application requesting information necessary to make the determination of suitability. The supplemental application may be sent to the applicant at the same time as the disclosure required by Section 10127.10.

(d) Each insurer shall develop and provide to all agents and other insurer representatives authorized to solicit individual consumers for the sale of annuities, a checklist, screening device, or other procedure to ensure that prospective clients have the mental capacity to enter into a contract. If a written instrument is used, it shall be retained by the insurer and made available to the commissioner upon request.

(e) In the case that a presumptively unsuitable annuity is issued to a senior, the issuer shall retain all records and documentation supporting its rebuttal of the presumption of unsuitability and shall make this documentation available to the commissioner upon request.

(f) Every insurer or entity marketing annuities shall establish auditable procedures for verifying compliance with this section.

(g) In addition to other remedies available in this article, code, and in California law, the commissioner, upon a finding of unsuitability, shall order the insurer to rescind the contract and to refund the premium plus interest of 10 percent per annum, including all fees and costs. An additional administrative penalty

1 equal to half the deposit amount may be ordered by the  
2 commissioner or by a court in actions brought under subdivision  
3 (e) of Section 789.

4 SEC. 4. Section 1724 is added to the Insurance Code, to read:

5 1724. An agent, broker, or solicitor who is not an active  
6 member of the State Bar of California may not share a commission  
7 or other compensation with an active member of the State Bar of  
8 California ~~who is not licensed as an insurance agent~~. For purposes  
9 of this section, “commission or other compensation” means  
10 pecuniary or nonpecuniary compensation of any kind relating to  
11 the sale or renewal of an insurance policy or certificate or an  
12 annuity, including, but not limited to, a bonus, gift, prize, award,  
13 or finder’s fee.

14 SEC. 5. Section 1749.8 is added to the Insurance Code, to  
15 read:

16 1749.8. (a) Every insurance agent, broker, or insurer  
17 representative licensed for the sale of annuities shall satisfactorily  
18 complete eight hours of training prior to soliciting individual  
19 consumers in order to sell annuities.

20 (b) Every insurance agent, broker, or insurer representative  
21 licensed for the sale of annuities shall satisfactorily complete four  
22 hours of continuing education every two years prior to license  
23 renewal. This requirement shall be part of, and not in addition to,  
24 the continuing education requirements of Section 1749.3.

25 (c) The training and continuing education required by this  
26 section shall consist of topics related to annuities, and California  
27 law, regulations, and requirements related to annuities, prohibited  
28 sales practices, and fraudulent and unfair trade practices. Subject  
29 matter determined by the commissioner to be primarily intended  
30 to promote the sale or marketing of annuities shall not qualify for  
31 credit towards the training and continuing education requirement.  
32 Any course or seminar that is disapproved under the provisions of  
33 this section shall be presumed invalid for credit towards the  
34 training and continuing education requirement of this section  
35 unless it is approved in writing by the commissioner.

36 SEC. 6. Section 10127.10 of the Insurance Code is amended  
37 to read:

38 10127.10. (a) Every policy of individual life insurance and  
39 every individual annuity contract that is initially delivered or  
40 issued for delivery to a senior citizen in this state on and after



1 January 1, 2004, shall have printed thereon or attached thereto a  
2 notice stating that, after receipt of the policy by the owner, the  
3 policy may be returned by the owner for cancellation by delivering  
4 it or mailing it to the insurer or agent from whom it was purchased.  
5 The period of time set forth by the insurer for return of the policy  
6 by the insured shall be clearly stated on the notice and this period  
7 shall be not less than 30 days. The insured may return the policy  
8 to the insurer by mail or otherwise at any time during the period  
9 specified in the notice. In the case of individual life insurance  
10 policies and individual annuity contracts (other than certain  
11 variable contracts and modified guaranteed contracts), return of  
12 the policy during the cancellation period shall have the effect of  
13 voiding the policy from the beginning, and the parties shall be in  
14 the same position as if no policy had been issued. All premiums  
15 paid and any policy fee paid for the policy shall be refunded by the  
16 insurer to the owner within 30 days from the date that the insurer  
17 is notified that the owner has canceled the policy. In the case of  
18 variable annuity contracts, variable life insurance contracts, and  
19 modified guaranteed contracts, the premium shall not be invested  
20 until after the expiration of the 30-day cancellation period. Return  
21 of the contract during the cancellation period shall void the policy  
22 from the beginning, and the parties shall be in the same position  
23 as if no policy had been issued, unless the insured knowingly  
24 signed a written waiver allowing the premium to be invested  
25 during the 30-day cancellation period. After executing a valid  
26 waiver, cancellation during the 30-day period shall entitle the  
27 owner to a refund of account value and any policy fee paid for the  
28 policy. The account value or premium and policy fee shall be  
29 refunded by the insurer to the owner within 30 days from the date  
30 that the insurer is notified that the owner has canceled the policy.

31 (b) This section applies to all individual policies issued or  
32 delivered to senior citizens in this state on or after January 1, 2004.  
33 All policies subject to this section which are in effect on January  
34 1, 2003, shall be construed to be in compliance with this section,  
35 and any provision in any policy which is in conflict with this  
36 section shall be of no force or effect.

37 (c) Every individual life insurance policy and every individual  
38 annuity contract, other than variable contracts and modified  
39 guaranteed contracts, subject to this section, that is delivered or  
40 issued for delivery in this state shall have the following notice



1 either printed on the cover page or policy jacket in 12-point bold  
2 print with one inch of space on all sides or printed on a sticker that  
3 is affixed to the cover page or policy jacket:

4  
5 “IMPORTANT

6  
7 YOU HAVE PURCHASED A LIFE INSURANCE POLICY  
8 OR ANNUITY CONTRACT. CAREFULLY REVIEW IT FOR  
9 LIMITATIONS.

10  
11 THIS POLICY MAY BE RETURNED WITHIN 30 DAYS  
12 FROM THE DATE YOU RECEIVED IT FOR A FULL  
13 REFUND BY RETURNING IT TO THE INSURANCE  
14 COMPANY OR AGENT WHO SOLD YOU THIS POLICY.  
15 AFTER 30 DAYS, CANCELLATION MAY RESULT IN A  
16 SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER  
17 CHARGE.”

18  
19 The phrase “after 30 days, cancellation may result in a  
20 substantial penalty, known as a surrender charge” may be deleted  
21 if the policy does not contain those charges or penalties.

22 (d) Every individual variable annuity contract, variable life  
23 insurance contract, or modified guaranteed contract subject to this  
24 section, that is delivered or issued for delivery in this state, shall  
25 have the following notice either printed on the cover page or policy  
26 jacket in 12-point bold print with one inch of space on all sides or  
27 printed on a sticker that is affixed to the cover page or policy  
28 jacket:

29  
30 “IMPORTANT

31  
32 YOU HAVE PURCHASED A VARIABLE ANNUITY  
33 CONTRACT (VARIABLE LIFE INSURANCE CONTRACT,  
34 OR MODIFIED GUARANTEED CONTRACT). CAREFULLY  
35 REVIEW IT FOR LIMITATIONS.

36  
37 THIS POLICY MAY BE RETURNED WITHIN 30 DAYS  
38 FROM THE DATE YOU RECEIVED IT FOR A REFUND OF  
39 THE POLICY’S ACCOUNT VALUE ON THE DAY THE  
40 POLICY IS RECEIVED BY THE INSURANCE COMPANY OR





1 AGENT WHO SOLD YOU THIS POLICY. A RETURN OF THE  
2 POLICY AFTER 30 DAYS MAY RESULT IN A  
3 SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER  
4 CHARGE.”

5  
6 The words “known as a surrender charge” may be deleted if the  
7 contract does not contain those charges.

8 (e) This section does not apply to life insurance policies issued  
9 in connection with a credit transaction or issued under a  
10 contractual policy-change or conversion privilege provision  
11 contained in a policy. Additionally, this section shall not apply to  
12 contributory and noncontributory employer group life insurance,  
13 contributory and noncontributory employer group annuity  
14 contracts, and group term life insurance, with the exception of  
15 subdivision (f).

16 (f) When an insurer, its agent, group master policyowner, or  
17 association collects more than one month’s premium from a senior  
18 citizen at the time of application or at the time of delivery of a  
19 group term life insurance policy or certificate, the insurer must  
20 provide the senior citizen a prorated refund of the premium if the  
21 senior citizen delivers a cancellation request to the insurer during  
22 the first 30 days of the policy period.

23 (g) For purposes of this chapter, a senior citizen means an  
24 individual who is 60 years of age or older on the date of purchase  
25 of the policy.

26 SEC. 7. Section 10127.13 of the Insurance Code is amended  
27 to read:

28 10127.13. Prior to the sale of any life insurance policy or  
29 annuity contract to a senior citizen, or the replacement of any life  
30 insurance policy or annuity contract held by a senior citizen, the  
31 life insurer and life agent shall either disclose the surrender period,  
32 all associated penalties, and the length of the deferral period, if  
33 any, in 12-point bold print on the cover sheet of the policy or  
34 disclose the location of the surrender information in bold 12-point  
35 print on the cover page of the policy, or printed on a sticker that is  
36 affixed to the cover page or to the policy jacket. The notice  
37 required by this section may appear on a cover sheet that also  
38 contains the disclosure required by subdivision (d) of Section  
39 10127.10.

1 SEC. 8. Section 10127.17 is added to the Insurance Code, to  
2 read:

3 10127.17. (a) In addition to the disclosure required pursuant  
4 to Section 10127.10, every policy of life insurance and every  
5 annuity that is proposed to be sold and issued to a senior citizen  
6 shall be accompanied by a one-page outline disclosure, to be  
7 completed by the agent and presented to the purchaser, consisting  
8 of the following information:

9 (1) Relevant information about any surrender charges that  
10 would be paid by the purchaser if the purchaser were to replace or  
11 revoke the insurance contract before its maturity, including, but  
12 not limited to, the amount, whether the charge is incurred at the  
13 death of the annuitant or at some other time, and if there is an  
14 annual surrender charge-free withdrawal available.

15 (2) The length of the deferral period, if any.

16 (3) The fact that the agent will receive a payment or  
17 commission from the insurer issuing the policy, if that is the case,  
18 and a statement that the amount of the payment or commission  
19 may be affected by the price of the policy and the length of the  
20 deferral period, if any.

21 (4) The fact that the sale or liquidation of any stock, bond, IRA,  
22 certificate of deposit, mutual fund, annuity, or other asset to fund  
23 the purchase of the product may have tax consequences, result in  
24 early withdrawal penalties, or result in other costs or penalties as  
25 a result of the sale or liquidation.

26 (5) A statement that the applicant should consult with an  
27 independent advisor other than an insurance representative, such  
28 as an attorney, accountant, or other professional, regarding the  
29 legal and tax consequences of purchasing the annuity or using the  
30 annuity to qualify for programs such as Medi-Cal.

31 (6) The right to return the policy within 30 days of its issuance  
32 for a full refund.

33 (7) A statement that if the applicant has an existing annuity, that  
34 he or she should contact the issuer of that annuity or the applicable  
35 agent for an explanation of the surrender charges and the  
36 ramifications of surrendering the existing annuity.

37 (b) The senior citizen receiving the one-page outline disclosure  
38 shall acknowledge receipt of the document by signing a copy and  
39 returning it to the agent.



1 SEC. 9. Section 10127.18 is added to the Insurance Code, to  
2 read:

3 10127.18. (a) This section applies to the sale or offering for  
4 sale of ~~insurance settlements~~ *life insurance policies* and annuities.

5 (b) An insurer, agent, or broker is required to deliver a notice  
6 in writing to all clients and prospective clients 65 years of age or  
7 older with whom a meeting is scheduled in the client's or  
8 prospective client's home. The notice shall be delivered no less  
9 than 24 hours before the meeting is scheduled to begin. The notice  
10 shall include all of the following information:

11 (1) The right of the client or prospective client to terminate the  
12 meeting at any time.

13 (2) The right of the client or prospective client to have other  
14 persons present at the meeting, including family members,  
15 financial advisors, or attorneys.

16 (3) The right of the client or prospective client to contact the  
17 Department of Insurance or the Department of Corporations for  
18 information or to make a complaint, with the notice to include the  
19 telephone numbers for the consumer complaint lines for those  
20 departments.

21 (c) Upon contacting a client or prospective client who is 65  
22 years of age or older at his or her home, an insurer, agent, or broker  
23 shall, before making any other statement except a greeting, or  
24 asking the client or prospective client any other questions, state  
25 that the purpose of the contact is to effect a sale, and state all of the  
26 following information:

27 (1) The identity of the person making the solicitation.

28 (2) The name of the insurer, broker, or agent making the  
29 solicitation or represented by the person making the solicitation,  
30 if known.

31 (3) That a life insurance policy or an annuity may be offered for  
32 sale.

33 (d) The agent or assistants of life agents shall, also show or  
34 display identification that states the information required by  
35 subdivision (c) as well as the address of the place of business and  
36 the insurance license number of the licensee.

37 (e) An insurer, agent, or broker shall leave the home of a client  
38 or prospective client as soon as reasonably possible after being  
39 asked to leave by the client or prospective client.

1 (f) An insurer, agent, or broker may not solicit a sale or order  
2 for the sale of an annuity or life insurance policy at the residence  
3 of a client or prospective client, in person or by telephone, by using  
4 any plan, scheme, or ruse that misrepresents the true status or  
5 mission of the contact.

6 (g) An insurer, agent, or broker has an affirmative duty to verify  
7 that the client or prospective client has the capacity to enter into  
8 a contract, and shall terminate any meeting in which the client's or  
9 prospective client's capacity to enter into a contract is not clear.

10 (h) The provisions of this section also apply to individuals who  
11 are not insurers, agents, or brokers but who facilitate, arrange, or  
12 participate in the sales presentation of an annuity or life insurance  
13 policy and receive any money, gift, value, or other consideration  
14 from the insurer, broker, or agent for the services rendered to assist  
15 in the sales presentation.

16 SEC. 10. Section 10509.8 of the Insurance Code is amended  
17 to read:

18 10509.8. (a) A violation of this article shall occur if an agent  
19 or insurer recommends the replacement or conservation of an  
20 existing policy by use of a materially inaccurate presentation or  
21 comparison of an existing contract's premiums and benefits or  
22 dividends and values, if any, or recommends that an insured 65  
23 years of age or older purchase an unnecessary replacement  
24 annuity.

25 (b) For purposes of this section, "unnecessary replacement"  
26 means the sale of an annuity to replace an existing annuity that  
27 requires that the insured will pay a surrender charge for the annuity  
28 that is being replaced and that does not confer a substantial  
29 financial benefit over the life of the policy to the purchaser so that  
30 a reasonable person would believe that the purchase is  
31 unnecessary.

32 (c) Patterns of action by policyowners who purchase  
33 replacement policies from the same agent after indicating on  
34 applications that replacement is not involved, shall constitute a  
35 rebuttable presumption of the agent's knowledge that replacement  
36 was intended in connection with the sale of those policies, and such  
37 patterns of action shall constitute a rebuttable presumption of the  
38 agent's intent to violate this article.



1     (d) This article does not prohibit the use of additional material  
2     other than that which is required that is not in violation of this  
3     article or any other statute or regulation.

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